Supreme Court, U.S.
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No. 01-1171

In the Supreme Court of the United States

CONNIE BURTON, PETITIONER

v.

TAMPA HOUSING AUTHORITY AND UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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bp

QUESTION PRESENTED

Section 1437d(*l*)(6) of Title 42 of the United States Code provides that public housing leases must contain a clause stating that "any drug-related criminal activity on or off [the] premises engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy."

The question presented is:

Whether the lease clause provided for in 42 U.S.C. 1437d(*l*)(6) (1994 & Supp. V 1999) is violated by drug-related criminal activity of household members, regardless of whether it can be shown that the tenant knew, or had reason to know, of the drug activity.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-25) is reported at 271 F.3d 1274. The opinion of the district court (Pet. App. 26-35) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 2001. The petition for a writ of certiorari was filed on February 5, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The United States Housing Act of 1937 (Housing Act), 42 U.S.C. 1437 *et seq.*, authorizes the Secretary of Housing and Urban Development (HUD) to make loans or loan commitments to public housing agencies to help finance the development, acquisition, or operation of

low-income housing projects by such agencies. 42 U.S.C. 1437b(a). Under 42 U.S.C. 1437d(*l*)(6) (1994 & Supp. V 1999), public housing leases must

> provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

See also 42 U.S.C. 1437d(*l*) (1994 & Supp. IV 1998) (defining "drug-related criminal activity" to mean "the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in [21 U.S.C. 802]")); see generally *Department of Housing and Urban Development* v. *Rucker*, No. 00-1771 (Mar. 26, 2002).

2. Petitioner is a 43-year old single mother of three children who lives in the Robles Park apartments, a public housing project owned by the Tampa Housing Authority (THA). She lived in her current apartment for nearly five years before the current litigation began. Her 19-year-old son, Narada Burton resided with her in the apartment and was listed as a household member on Burton's lease. Pet. App. 2.

On April 15, 1999, petitioner's son was arrested for allegedly participating in an illegal drug transaction that had occurred on March 2, 1999. He subsequently was convicted of a felony drug offense based on the transaction. Pet. App. 2 n.2. The offense occurred outside of Burton's apartment unit but on THA property. Petitioner claims she had no prior knowledge of

the alleged offense and was not involved in that conduct in any way. *Id.* at 2.

On May 12, 1999, THA filed an action to evict petitioner based on Narada's drug activity. Pet. App. 27. The ground for eviction was that petitioner was in violation of paragraph 13(I) of her lease, which obligated her, *inter alia*, "[t]o assure that * * * [m]embers of [her] household * * * shall not * * * engage in any * * * drug-related criminal activity (as defined herein) upon or within two hundred (200) feet of THA's property." *Id.* at 28. The lease further provided that any such activity is ground for termination of the lease. *Ibid.*

3. Petitioner commenced this action in the United States District for the Middle District of Florida, seeking *inter alia* an injunction prohibiting her eviction. Pet. App. 27.* She alleged that she could not be evicted based on drug-related criminal activity of which she had no prior knowledge. The district court denied petitioner's motion for summary judgment and granted THA's motion for summary judgment. *Id.* at 26-35. The court ruled that "[Section] 1437d clearly and unambiguously authorizes THA's policy to initiate eviction proceedings based on the [drug-related criminal] actions of household members." *Id.* at 30. The court rejected petitioner's claims that Section 1437d(*l*)(6) violates the First Amendment and the Due Process Clause. *Id.* at 32-33. The court also held that petitioner's state-law claim was "preempted to the extent that it conflicts with" Section 1437d(*l*)(6). *Id.* at 34.

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* Four other residents were originally joined as plaintiffs in the district court, but they dismissed their claims before that court ruled on the summary judgment motions. Pet. App. 27 n.2.

4. Petitioner appealed, and the Eleventh Circuit affirmed. The court of appeals "follow[ed] the lead" of Judge Sneed's dissent in the Ninth Circuit's en banc decision in *Rucker* v. *Davis*, 237 F.3d 1113, 1128-1142 (2001). Pet. App. 5. The court determined that the language of Section 1437(d)(*l*)(6) "is unmistakably clear," *id.* at 6, and that, because the statute is clear on its face, HUD's interpretation—that the statute does not include an "unknowing tenant" defense—is the "only permissible construction of the statute," *id.* at 7. The court also rejected petitioner's renewed arguments that Section 1437d(*l*)(6), as so construed, violates the First Amendment and the Due Process Clause. *Id.* at 19-22.

ARGUMENT

As petitioner concedes (Pet. 7), the question presented in the instant petition is identical to the question presented in *Department of Housing and Urban Development* v. *Rucker*, No. 00-1770, and "this Court's decision in *Rucker* should apply with equal force to [petitioner's] case," Pet. 8. In *Rucker*, this Court held that Section 1437d(*l*)(6) "unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity." Slip op. 4. That is the same conclusion that the court of appeals reached in this case. Accordingly, the petition for a writ of certiorari should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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